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FISCAL IMPACT STATEMENT

LS 7348

BILL NUMBER: SB 456

NOTE PREPARED: Feb 5, 2015

BILL AMENDED: Feb 5, 2015

SUBJECT: Unemployment Insurance.

FIRST AUTHOR: Sen. Boots

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill provides that any part of an unemployment insurance surcharge not used to pay interest on the advances made to the state from the Federal Unemployment Trust Fund must be credited against the total amount of benefits charged to the state's Unemployment Insurance Trust Fund (UI Trust Fund) before determining each employer's share of those benefits. It removes language that requires the extra surcharge amount be credited to each employer's experience account in proportion to the amount of the surcharge the employer paid.

The bill removes language establishing certain limitation periods for the repayment of unemployment benefit overpayments. It repeals a provision allowing an extended repayment period for benefit overpayments in certain circumstances. It also establishes an administrative procedure for the Department of Workforce Development (DWD) to require each employer of an individual for whom an unemployment benefit overpayment is established to withhold amounts from the individual's income and pay those amounts to the department. It provides that the amounts withheld and the limitations on withholding are established in the same manner as a garnishment. It provides that an individual may contest an income withholding and request a hearing by an administrative law judge.

The bill provides that an employer may not use income withholding as the basis for refusing to hire, discharging, or taking disciplinary action against an individual, and establishes civil penalties for an employer that refuses to withhold income or knowingly misrepresents an employee's income.

The bill requires as a condition precedent to the payment of benefits in a year immediately following a year in which benefits were paid or following a period of disqualification for failure to apply for or accept suitable work that an individual: (1) perform insured work; (2) earn remuneration in employment in at least each of

eight weeks; and (3) earn remuneration at least equal to the product of the individual's weekly benefit amount multiplied by eight.

The bill provides that, if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance is just cause for discharge, if good cause for the absences or tardiness is not established. (Currently, the individual must show good cause for the absences or tardiness.)

The bill establishes that a crime committed using the Internet or another computer network may be prosecuted in any county: (1) from which or to which access to the Internet or another computer network was made; or (2) in which a computer, computer data, computer software, or computer network used to access the Internet or another computer network is located.

Effective Date: July 1, 2015.

Explanation of State Expenditures: (Revised) The bill affects the state as an employer. The bill requires that an employer may not use income withholding for unemployment insurance overpayments as the basis for refusing to hire, discharging, or taking disciplinary action against an individual, and establishes civil penalties for an employer that refuses to withhold income or knowingly misrepresents an employee's income. Employers who are found to be in violation of these provisions may be ordered to hire or reinstate an employee who was adversely impacted by the employer's action and may be fined an amount not to exceed \$1,000. Additionally, employers who refuse to withhold income from an affected employee or knowingly misrepresent the income of the employee may be ordered to pay punitive damages to DWD in an amount not to exceed \$1,000 for each pay period the employer failed to comply with the withholding provisions of the bill.

Department of Workforce Development (DWD): DWD is the state agency that administers the state's Unemployment Insurance program. The bill's requirements are within DWD's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

(Revised) *Unemployment Insurance Trust Fund:* DWD estimates that the bill will assist in additional overpayment recovery of approximately \$2 M annually. Specifically, the bill allows for overpayment recovery for certain overpayments. The other provisions in the legislation will have a negligible impact to the UI Trust Fund.

(Revised) **Additional Information:** The bill makes changes to language regarding the state's unemployment insurance surcharge and how amounts from the surcharge that are not used to pay down federal loan interest may be used. Employers pay for unemployment insurance benefits through federal (FUTA) and state (SUTA) premiums. Since 2011, Indiana employers have also paid an additional state solvency surcharge to pay down the outstanding balance owed to the Federal Unemployment Account from the UI Trust Fund. The CY 2014 state surcharge rate was 8% of employer's SUTA premiums. As of January 2, 2015, Indiana owed \$858 M to the Federal Unemployment Account.

Currently, surcharge amounts paid by an employer that are not used to pay down federal loan interest are applied to the individual employer experience accounts. The bill instead applies these surcharge amounts to the total amount of benefits charged to the state's UI Trust Fund before determining each employer's required contribution rate. In other words, the unused amount will be used to directly offset the mutualized

unemployment insurance costs of all employers. This provision is currently moot, as revenues from the surcharge are used only to pay interest on UI Trust Fund loans from the Federal Unemployment Account, and not for any other purpose. This provision may come into effect at such time as all federal interest payments have been made and there are trailing surcharge revenues that may not be used for said interest payments. DWD anticipates that this provision will affect roughly \$5 M in surcharge funds.

The bill also includes several other provisions that serve as "clean up" to the unemployment insurance statutes. Specifically, the bill includes language on the allowable timeframes and methods for DWD in collecting overpayments from benefit recipients as well as tightens the qualifications to receive benefits in a year following a year in which benefits were paid. This should lead to DWD collecting additional overpayments and should lessen total benefits paid, which would have a positive impact on the UI Trust Fund. Indiana has averaged a cash recovery of fraud overpayments of approximately \$0.48 M per year since 2008. DWD estimates that, due to the overpayment recovery provisions of the bill, there will be a large collection in the first quarter following implementation, and then ongoing recoveries will be higher than currently, but steady on a quarter-to-quarter basis. Specifically, they anticipate that they may recover up to \$3 M in the first quarter after implementation, with total quarterly recoveries approaching \$0.7 M, an increase of \$2 M in recovery per year after the first quarter.

The bill also clarifies that employers do not need to have a rule regarding attendance in order to discharge an employee for unsatisfactory attendance, if good cause of the absences or tardiness is not established. This provision is clarification only and should not have an impact on the UI Trust Fund.

Last, the bill allows that individuals who use a computer or Internet to violate provisions of the unemployment insurance statute may be prosecuted in either the violator's home county, the county in which the employer has a place of business, or in a county (or counties) in which the alleged computer or Internet access was made. Current law only allows that prosecutions take place in either the violator's county and the employer county. It is possible that this change may result in more prosecutions of such crimes.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

Explanation of Local Expenditures: (Revised) The bill affects local units as employers. The bill requires that an employer may not use income withholding for unemployment insurance overpayments as the basis for refusing to hire, discharging, or taking disciplinary action against an individual, and establishes civil penalties for an employer that refuses to withhold income or knowingly misrepresents an employee's income. Employers who are found to be in violation of these provisions may be ordered to hire or reinstate an employee who was adversely impacted by the employer's action and may be fined an amount not to exceed \$1,000. Additionally, employers who refuse to withhold income from an affected employee or knowingly misrepresent the income of the employee may be ordered to pay punitive damages to DWD in an amount not to exceed \$1,000 for each pay period the employer failed to comply with the withholding provisions of the bill.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would

likely be small.

State Agencies Affected: DWD, All.

Local Agencies Affected: Trial courts, local law enforcement agencies, All.

Information Sources: Michelle Marshel, DWD, mmarshel@dwd.in.gov; Department of Workforce Development Presentation to State Budget Committee, December 11, 2014; DWD website, www.in.gov/dwd/2558.htm; U.S. Department of Labor, Employment and Training Administration, <http://www.ows.doleta.gov/unemploy/budget.asp>.

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